



2010 Fall Caravan

Common Commission Violations And Agency

Presented by Marie Spodek, DREI

6 hours Required (Not approved for appraisers)

REGISTRATION FEE: **Save \$\$\$ by registering early!**

Early Bird Fee: \$60 (Must be postmarked no later than Sept. 24)

After Sept. 24: \$70 (Includes registration received on class day)

(The Commission will retain \$10 of any refunded registration fee)

Wednesday, Sept. 29	The Lodge at Deadwood	100 Pine Crest Ln., Deadwood
Thursday, Sept. 30	Rapid City Ramkota	2111 N. Lacrosse St., Rapid City
Friday, October 1	Pierre Ramkota	920 W. Sioux Ave., Pierre
Monday, October 4	Sioux Falls Ramkota	3200 W Maple St., Sioux Falls
Tuesday, October 5	Sioux Falls Convention Center	1101 Northwest Ave., Sioux Falls
Wednesday, October 6	Aberdeen AmericInn	310 E Centennial St., Aberdeen
Thursday, October 7	Watertown Event Center	1901 9 th Ave. SW (Hwy 212), Watertown

Deadwood Attendees: Note New Location

Sioux Falls Attendees: Caravan course is at a different site each day

Aberdeen Attendees: Note New Location

For course description, instructor bio and links to the event facilities, (maps & directions), log onto www.state.sd.us/sdrec and click on "Caravan Information"

Registration begins at 8:15 a.m. Course is scheduled from 9 a.m to 4 p.m.

Pre-registration is required to guarantee admission and is STRONGLY ENCOURAGED.

The SDREC has a strict attendance policy and expects participants to attend the entire session.

For special needs or access assistance, call the Commissions office at (605) 773-3600.

Registration Form can be found on the BACK of this newsletter.



From the Director's Desk

I hope you have had an enjoyable summer and for those of you who experienced the wrath that this summer's storms brought, I wish you pleasant days ahead. With summer nearing its end, the Fall Caravan will be fast approaching. This seminar will emphasize violations of real estate license law, as well as a refresher on agency, which still seems to be an issue. Please plan on attending this worthwhile educational session. It's well worth the cost compared to the expenses incurred if you are served with a Commission complaint.

Speaking of cost, several responsible brokers have been served under the Commission's citation program. Many of the citations issued were because audit exceptions had not been corrected. One of these uncorrected citations resulted in a fine of \$100 for a 9-cent discrepancy. This discrepancy, which was a transposition error by the bank, was first found by Commission staff in February 2006. The broker was told how to rectify this in 2006; however, the discrepancy still showed up during a 2008 audit and still remained on the books as recent as a month ago. One phone call to the bank could have straightened this out but instead, the broker kept listing it as "outstanding" in order to reconcile the trust account.

Those of you who sell real estate at auction, please make sure you are adhering to agency disclosure requirements. An auctioneer does not have to provide a real estate relationships disclosure statement to buyers IF the auctioneer discloses in *all* advertising that the auctioneer is representing the seller AND announces this fact at the commencement of the sale. If the auctioneer does not do one of these requirements, the auctioneer must present agency relationships disclosure statements to the potential buyers. Therefore, if an auctioneer does not want to go to the

added expense of disclosing "Auctioneer Represents Seller" in any of the auctioneer's advertising, then the auctioneer must provide real estate relationships disclosure statements.

At the request of the South Dakota Association of REALTORS®, the Commission has modified the mediation clause in its prescribed purchase agreement. The Sellers/Purchasers Dispute Resolution System (DRS) was required to be utilized if the seller and purchaser agreed to mediate in case of a dispute. The DRS is proprietary to and developed by the National Association of REALTORS®. However, not all local REALTOR® boards in South Dakota have formally adopted to provide the DRS and nonmember licensees do not have access to this service. The new clause now allows the option for private mediation services. Although this change has taken place on the Commission's prescribed purchase agreement, you do not have to order new forms. Current inventory is fine to use but if DRS is not available to you, make sure you make appropriate provisions in the purchase agreement you are using.

Responsible brokers — please take note of the trust account article in this issue. Commission staff is realizing that more and more responsible brokers are not overseeing their trust accounts and are relying on untrained staff to manage the trust accounts. Trust accounts and the accountability thereof lie with the responsible broker.

I recently attended a seminar on mortgage fraud. Although mortgage fraud has been around for quite some time, the amount of losses incurred never cease to amaze me. For instance, 66% of FBI mortgage fraud investigations involve losses greater than a million dollars and between March and June of 2010, \$2.3 billion in losses were incurred. There are several foreclosure rescue scams occurring, so if you sense something is not right, it probably isn't. Be sure full disclosure is made throughout a transaction, look for discrepancies, ask questions and verify the answers.

DjN



License Renewal Reality Check

Renewal forms will be mailed late September/early October to those who have licenses expiring at the end of 2010. For active licensees, the forms will be mailed to the business address on file with the Commission office. For inactive licensees, the forms will be mailed to the home address.

Now is the time to be completing continuing education or postlicensing education hours! Don't wait until the last minute!



In Memoriam

The SD Real Estate Commission extends its sincerest sympathy to the families and friends of the following licensee who recently passed away:

Betty Sherr, N. Sioux City, SD

Real Estate Regulatory News from Around the U.S.

(used with permission from ARELLO)

Builders Sue Over RRP Rules

The National Association of Homebuilders (NAHB) has announced that it and several other industry associations have mounted a legal challenge to the U.S. Environmental Protection Agency's recently implemented lead-based paint renovation repair and painting (RRP) rules. Under the new rules, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities and schools built before 1978 must be certified and follow specific work practices to prevent lead contamination. According to NAHB, the new rules eliminate an existing "opt-out provision"

under which consumers could allow their contractors to bypass extra preparation, clean-up and recordkeeping requirements in homes where there were no children under 6 or pregnant women, thus avoiding additional costs. NAHB Chairman Bob Jones said in a press release, "Removing the opt-out provision more than doubles the number of homes subject to the regulation. About 79 million homes are affected, even though EPA estimates that only 38 million homes contain lead-based paint. Removing the opt-out provision extends the rule to consumers who need no protection." The Hearth, Patio & Barbecue Association, the National Lumber and Building Material Dealers Association and the Window and Door Manufacturers Association joined NAHB in filing the petition for review in the U.S. Court of Appeals for the District of Columbia.

HUD Interprets RESPA Restrictions Against Broker Compensation for Home Warranties

The U.S. Department of Housing and Urban Development (HUD) has issued an interpretive rule that is intended to clarify the agency's view of anti-kickback and referral fee restrictions contained in the Real Estate Settlement Procedures Act (RESPA) as they relate to compensation paid to real estate brokers and agents by home warranty companies (HWCs). The interpretive rule issued by HUD General Counsel, Helen R. Kanovsky, concludes that:

- A payment by an HWC for marketing services performed by real estate brokers or agents on behalf of the HWC that are directed to particular homebuyers or sellers is an illegal kickback for a referral under RESPA section 8;
- Depending upon the facts of a particular case, an HWC may compensate a real estate broker or agent for "compensable services" when the services are actual, necessary and distinct from the primary services provided by the real estate broker or agent and when those additional services are not nominal and are not services for which there is a duplicative charge; and

- The amount of compensation from the HWC that is permitted under RESPA section 8 for such additional services must be reasonably related to the value of those services and not include compensation for referrals of business.

It's a Matter of Trust (Accounting)

When clients hire agents or property managers to represent them or manage their property, the responsibilities that are placed on the licensees' shoulders are enormous. Clients expect expert advice, negotiation, a smooth transaction and most importantly, peace of mind that they will be taken care of.

The writing of an earnest money check and a signed purchase agreement may initiate a real estate transaction, but that action may also be a culmination of many things in that client's life that led them to that transaction. Maybe they worked two jobs, cut expenses or gave up some of life's extras to save for a down payment. They also may have had a significant change in life – marriage, divorce, expanding family, an empty nest or an opportunity to invest. Whatever the need or desire to enter into a real estate purchase, few people in this world have money to burn. When it is spent, it is done so with a significant amount of consideration, emotion and stress.

So it is no surprise that clients expect **their** money to be accounted for at all times – every dollar, every cent. So does the Real Estate Commission.

Audit errors and irregularities have become the one of the most frequent reasons for the Commission to issue a citation or in more severe cases, lodge a complaint against a broker or property manager. Trust account violations are also entirely, completely, unquestionably A-V-O-I-D-A-B-L-E.

While there are many trust account requirements outlined in license law, the two that are often overlooked or disregarded are keeping individual ledger sheets for each principal and reconciling the account (and ledger sheets) on a monthly basis.

The SDREC compliance officers routinely see account records where the overall trust account balances with the bank, but the individual ledger accounts don't balance, are incomplete or simply don't exist. Individual ledgers are necessary to account for and document what money belongs to each client. Records must include every deposit and disbursement made on their behalf.

So, what happens when the trust account and ledgers don't balance? **The error must be found in a timely manner. It is NOT the responsibility of the SDREC compliance officers to find these errors for licensees.** Simply transferring money from a business operating account to a trust account to make up for an error is also not an acceptable solution – the discrepancy must be accounted for and documented. It is easy to transpose a number or key incorrect data onto a spreadsheet. The monthly account reconciliation should catch those kinds of mistakes. But, when those errors are left to perpetuate, it becomes increasingly difficult to account for and correct.

A typical response when the compliance officers bring the audit deficiencies to the attention of the broker or property manager is that he/she is unaware of the problem because the trust account is handled by their accountant, business manager, assistant, etc. This may very well be true, but it does not absolve a broker or property manager from the responsibility owed to their principal as trustee for their funds. The Commission will still hold the broker or property manager accountable and violations may result in a citation or disciplinary action.

It is the responsibility of the broker or property manager, when delegating the trust account duties to non-licensees, that all reporting and reconciliation requirements required by law are followed.

For questions regarding trust account requirements, brokers and property managers are encouraged to contact SDREC compliance officers Michelle Metzinger or Angela Hagen. The Trust Account Reconciliation Form is posted on the SDREC website at www.state.sd.us/sdrec as well as guidelines for real estate sales and property management.

Citations Issued

The Commission established the Citation Program to diminish the number of license law violations, decrease time required to bring licensees into compliance and to recover costs involved when action is required. The following individuals and/or firms have been issued citations. Each licensee/company has agreed to a Stipulation of Assurance and Voluntary Compliance and has satisfied the requirements of the stipulation.

Audit violation/Failure to reconcile trust account/Trust account not balanced:

William Spears, Pierre, Broker. \$100 penalty.

Ronald Bradeen, Custer, Broker. \$100 penalty.

Ramona Flaig Bradeen, Custer, Broker \$50 penalty.

Leland Treichel, Roscoe, Broker \$100 penalty.

Todd Waring, Ree Heights, Broker. \$100 penalty.

Rita Linn, Pierre, Broker. \$100 penalty.

Barbara Swaney, Rapid City, Broker. \$100 penalty.

Disciplinary Action

The following disciplinary actions have become effective since the last report in the newsletter. A Stipulation and Assurance of Voluntary Compliance is a settlement agreement between licensees and the Real Estate Commission and constitutes neither an admission nor a denial of any violation.

Martin Jurisch, New Underwood, Broker. Stipulation and Assurance of Voluntary Compliance. Mr. Jurisch shall 1) pay costs incurred by the Commission of \$3,639.44; (2) shall not hereafter use the phrase "absolute auction" unless such auction is an auction "without reserve or qualifying conditions" as reflected in ARSD 20:69:06:07, or as hereafter amended or qualified; (3) will reimburse the Complainant \$2180.00 for travel expenses and time associated with his trip to the auction; (4) will sponsor, pay for and make arrangements for a continuing education program relevant to this proceeding. The hours and program shall be determined with approval by Commission staff. The

educational program shall be open to the public and shall include a mailing to provide notice thereof to any interested parties. Alleged violation of SDCL 36-21A-71(1);(3);(31) and ARSD 20:69:06:07 for advertising a land auction as an "absolute auction" and withdrawing the land from sale after the bid received was short of a payoff amount needed to satisfy a mortgage on the property.

New Licensees

The South Dakota Real Estate Commission would like to welcome the following new licensees.

Broker

Altman, Adam H – Rapid City
Berglee, Clifton M – Laurel, MT
Meadors, Robert L – Sioux Falls
Quella, Mary C – Vista, CA
Waterbury, John G – O'Neill, NE

Broker Associate

Althoff, Tetiana – Waubay
Boheman, John D – Sioux Falls
Cady, Anthony M – Watertown
Cahoy, Daniel D – Rapid City
Cardona, Vanessa K – Cavour
Dagel, Karla J – Watertown
Day, Jardy R – Watertown
Den Boer, Ann M – Sioux Falls
Ehly, Sandra D – Belle Fourche
Groseth, Christopher – Yankton
Grosshans, Jared L – Rapid City
Hooth, Denice J – Wilmot
Klupp, Michael E – Sioux Falls
Koch, James F – Sioux Falls
Larson, Jannet L – Huron
Lhotak, Micheal J – Rapid City
Prestjohn, Jeri J – Piedmont
Rasdal, Karen A – Sioux Falls
Rieffenberger, Samuel J – Watertown
Sparks, Eddie – Huron
Sparks, Elizabeth – Huron
Tucker, IV, William A – Rapid City

Property Manager

Dougherty, Shon P – Sioux Falls
Fodness, Tod A – Sioux Falls
Hanson, Michael T – Sioux Falls
Hurst, Mia – Yankton
Maeschen, Melody A – Sturgis
Martin, Michael B – Brandon
Moore, Nataliya L – Rapid City
Sauerwein, Jennifer L – Aberdeen
Schad, Marina S – Rapid City

Thorpe, Barbara – Sioux Falls
Wolfgang, Brian J – Sioux Falls

Reg. Home Inspector

Winkler, Bernhard M – Rapid City

Res. Rental Agent

Anliker, Kristin J – Brandon
Sauerwein, Corey R – Aberdeen
Swoboda, Lindsey - Brookings

Salesperson

Bolton, Robert W – Temecula, CA

Timeshare Agent

Burg, Beverly – Rapid City
Keith, Carey T – Rapid City
White, Karen S – North Platte, NE

South Dakota Real Estate VIEW

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Articles by outside experts express the author's particular viewpoints. These opinions are not necessarily shared by the Commission, nor should they be mistaken for official policy. The articles are included because they may be of interest to the readers.

APPRAISER UPDATE

This section of the South Dakota Real Estate Review is the responsibility of the South Dakota Department of Revenue and Regulation Appraiser Certification Program. Articles are printed here to communicate pertinent information to those appraisers who receive this newsletter and are licensed under the Certification Program. Appraiser certification inquiries can be directed to Sherry Bren, Program Administrator, 445 East Capitol, Pierre, SD 57501, 605-773-4608

Appraiser Certification Program Mission–Purpose–Intent

The Appraiser Certification Program was implemented July 1, 1990, pursuant to enactment of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) by Congress. The mission of the Program is to certify, license and register appraisers to perform real estate appraisals in the state of South Dakota pursuant to Title XI (FIRREA). The purpose of the Program is to examine candidates, issue certificates, investigate and administer disciplinary actions to persons in violation of the rules, statutes and uniform standards, and approve qualifying and continuing education courses. Title XI intends that States supervise all of the activities and practices of persons who are certified or licensed to perform real estate appraisals through effective regulation, supervision and discipline to assure their professional competence.

Appraiser Certification Program Advisory Council

Council members provide recommendations to the Secretary of the Department of Revenue and Regulation in the areas of program administration in order to sustain a program that is consistent with Title XI. The Council meets quarterly in public forum. See the Website for meeting information. www.state.sd.us/appraisers

Vacancy - Advisory Council

The Department of Revenue and Regulation is seeking nominations for a **State-Licensed Appraiser** to serve as a member of the Appraiser Advisory Council.

The Advisory Council is responsible for advising the Department Secretary in matters of program administration, procedure, and policy in order to sustain a program that is consistent with Title XI, Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 administered by the Appraisal Subcommittee and the uniform standards and qualifications criteria as set by the Appraisal Standards Board and the Appraiser Qualifications Board of the Appraisal Foundation. The council members do not receive compensation for any expenses incurred to serve on the council. Four meetings are held each year in Pierre. The term limit is four years.

If you are interested in nominating yourself or another appraiser for appointment to the Advisory Council, please submit your nomination in writing to the Dept. of Revenue and Regulation, Appraiser Certification Program, 445 E. Capitol Ave., Pierre, South Dakota 57501.

The nomination should include the appraiser's name, address, appraiser title and the reason that you believe you or the person you have nominated should be appointed to the Advisory Council. Any person nominated for the position should possess substantial knowledge regarding appraising, a reasonable understanding of Title XI, FIRREA and its impact on the appraiser profession, and be highly respected by other appraiser professionals.

Please submit nominations to the Department no later than October 15, 2010. If you have any questions, please feel free to contact Sherry Bren at 605.773.4608.

New Licensees – July/August 2010

Robert K. Ruggles, State-Certified General – Florham Park, NJ

Nicholas J. Dizona, State-Certified General – Omaha, NE

Jason S. VanRuler, State-Registered – Harrisburg, SD

Bonnie M. Downing, State-Certified General – North Platte, NE

Colin M. Steen, State-Registered – Rock Valley, IA

Brian D. Schaefer, State-Certified Residential – Sioux City, IA

Information Regarding Disciplinary Actions

Public information regarding disciplinary action taken against an appraiser is available upon written request to the Department of Revenue and Regulation, Appraiser Certification Program, 445 East Capitol Avenue, Pierre, SD 57501 or e-mail – Sherry.Bren@state.sd.us. Include in the request for information the name of the appraiser and the appraiser's city and state of residence. (Disciplinary action may include denial, suspension, censure, reprimand, or revocation of a certificate by the department. (ARSD 20:14:11:03))

The following disciplinary action has been taken by the Department of Revenue and Regulation, Appraiser Certification Program:

Kelly A. Longstaff, Rapid City, South Dakota – Complaint Case # 09-312. The Department of Revenue and Regulation entered an Amended Agreed Settlement, effective August 4, 2010, accepting the immediate, voluntary surrender of Longstaff's appraiser license.

Anonymous Complaints

ARSD 20:14:11:01.01. Anonymous complaints. Initiation of an investigation may be commenced upon receipt of an anonymous complaint if it meets the following criteria:

(1) The allegations of violations of any provision of this article are considered credible and based upon factual information which is independently verifiable; and

(2) The complaint is accompanied by a copy of the appraisal report or other documents which contain clearly identifiable errors or violations of the provisions of this article.

Review of Cases – January 1, 2010 through July 16, 2010

For the period 01/01/2010 through 07/16/2010, the Department has received 13 upgrade applications and initiated 11 complaint investigations.

Upgrades – 9 pending.

Complaints – 5 pending.

Upgrades – August 2010

Jeff Barker, State-Certified General
Jonathan Hatch, State-Certified
Residential

Standards Deviation Ten Common Misconceptions About Uniform Standards

(by Joseph Palumbo, SRA)

While no system or doctrine is perfect, the Appraisal Standards Board of The Appraisal Foundation – which is responsible for developing and interpreting the Uniform Standards of

Professional Appraisal Practice – has come a long way in its quest to provide the industry with a clear, concise set of minimum professional appraisal standards. However, there remain a few misconceptions about USPAP that stagnate and confuse the industry from both the appraiser and user side.

The following is a list of 10 common USPAP misconceptions that I have encountered during my 10 years as a USPAP instructor and my 12 years managing thousands of appraisers.

Misconception One – USPAP in general is too overwhelming and intimidating.

Truth: The document containing the guidance is quite thick; however, USPAP is technically just Definitions, Rules, Standards and Statements. The Advisory Opinions (AO) and FAQs are for information and guidance only, so the average appraiser – involved in appraising, doing reviews and possibly some appraisal consulting – will not have to regularly consult most of the few hundred pages that are bound in the document.

Consider taking your copy of USPAP and putting a binder paper clip on the table of contents (including the preamble) and each of the following sections: Definitions, Rules and Standards 1 through 5. At this point, you have only 45 pages to review. Throw in a few Statements and Advisory Opinions pertinent to your specific appraisal problems, and perhaps you are up to 55 or 60 pages. If you are just performing appraisals and doing some Standard 3 reviews, the amount is significantly less; Standards 1, 2 and 3 combined are only 37 pages, and even with the addition of a few Statements and AOs, the total page count is still under 50 – not really intimidating at all.

Misconception Two – USPAP requires verification of sales via two sources.

Truth: Appraisers are required to “collect ... verify and analyze all information necessary for credible assignment results ...” as indicated in SR 1-4. Since “verification” is not defined by the ASB, the word is considered to have the same meaning as in common English: “To confirm or substantiate in law by oath: to establish the truth, accuracy, or

reality of; verify the claim” (Merriam-Webster online dictionary).

The method or extent of verification should take into consideration the use of the assignment, the client’s and user’s expectations, what the appraiser’s peers would do in the same situation and what level of verification market participants expect. In the end, the extent of the verification is the appraiser’s responsibility and is part of the appraiser’s scope of work decision.

Misconception Three – In developing an opinion of market-value assignment, analyzing a current agreement of sale, when available through the normal course of business, is as simple as stating, “The value opinion confirms the sale price,” when reporting the findings.

Truth: Since “analyze” is not defined by the ASB, the word is considered to have the same meaning as in common English: “to separate (a material or abstract entity) into constituent parts or elements; to determine the elements or essential features of (opposed to synthesize); to examine critically so as to bring out the essential elements or give the essence of; to carefully and in detail identify causes, key factors, possible results, etc.” (Merriam-Webster online dictionary).

Analyzing a contract, when available, should always include analysis of the details of the transaction: whether the sale is arms-length, whether there are any special financing or concessions, whether there are any personal property or special or unusual circumstances, and how the home was exposed (include listing in report or outline details) to the market.

Misconception Four – In developing an opinion of market value, analyzing a prior sale of the subject property that has occurred within three years of the effective date is as simple as stating the facts – “The subject sold for [amount] on [date]” – when reporting the findings.

Truth: As with misconception three, the issue of what “analyze” means is pertinent here. Sometimes there are no or very few details available on the particulars of a prior sale. When possible and available in the normal course of business, there should always be an attempt to determine whether the sale was arms-length, whether there were any special financing or concessions, personal

property or special or unusual circumstances. At a minimum, a determination of the availability or lack of information as well as the extent or means used to uncover the information is warranted.

The discussion of SR 1-5 is an area of importance for all report types and, in fact, those details must be summarized even in the event of a Restricted Use Report (see SR 2-2(c)(viii)).

Misconception Five – Expired or withdrawn listings are meaningless since Standard 1-5(a) only requires analysis of current listings.

Truth: While Standard 1-5(a) does only require analysis of current listings, an expired or withdrawn listing may provide additional insight on what the market's reaction was to a property when it was previously exposed. This is not to say the expired or withdrawn listing tells the whole story without investigation; failure to investigate could lead to false conclusions. Not discussing and properly analyzing prior listings that are germane and relative to the appraisal problem could be seen as a violation of both SR 1-1(b) – “in developing a real property appraisal, an appraiser must ... not commit a substantial error of omission or commission that significantly affects an appraisal” – SR 2-1(b) – “each written or oral real property appraisal report must ... contain sufficient information to enable the intended users of the appraisal to understand the report properly.”

Misconception Six – It is “misleading” to “adjust” active listings in an appraisal.

Truth: While comparables are addressed in USPAP as “comparable sales,” active listings can provide valuable insight as current competition offering buyer alternatives. Nowhere does USPAP prohibit the use of active (or withdrawn, expired or pending) listing data. Closed sales provide the basis for extracting adjustments for relevant characteristics but do not show the reality of a current buyer's view. Analysis of the available competition helps to validate the theory of substitution. Carefully screening listing data is just as important as screening sales data and is part of the overall data-

gathering process. Identification or labeling of such data in the report as “not sold” or “active” can prevent the user from mistaking them as closed sales when, in fact, they are not.

Misconception Seven – A valuation may be completed that has any unusual or client-requested condition as long as it is identified as a “hypothetical condition.”

Truth: Not all conditions are hypothetical conditions. The Comment to Standards Rule 1-2(g) states that a hypothetical condition may be used in an assignment only if use of the hypothetical condition is clearly required for legal purposes, or purposes of reasonable analysis or comparison. Furthermore, the use of the hypothetical condition must result in a credible analysis, and the appraiser must comply with USPAP disclosure requirements. To state that a value based on a hypothetical condition was completed for “reasonable analysis or comparison,” whereas market conditions or external or functional obsolescence are “ignored/omitted” just so the user can “observe the effect,” is to produce an appraisal that does not yield credible results. Note: Valuations with hypothetical conditions are not “hypothetical values” but are values based on hypothetical conditions.

Misconception Eight – The ASB prohibited appraisal updates in 2005.

Truth: The term “update” is often used by clients when they are seeking a current appraisal of a property that was the subject of a prior assignment. In 2005, AO-3 was revised clarifying that an “update” was not an extension of a prior assignment but a new assignment. Based on that revision, three ways to satisfy reporting the need to provide a more current valuation are to: 1) provide a new report without incorporation, 2) provide a new report that incorporates by attachment, and 3) provide a new report that incorporates by reference (must be original firm and original intended user; see AO-3 for details). The new assignment does not also mean starting over from “scratch.” The option used and the scope of work for the new assignment should take into consideration the user's expectations, additional assignment

conditions, changes to the property, duration of time since prior assignment and, of course, the appraisal problem.

Misconception Nine – Those who provide significant appraisal assistance need only to be named in the certification.

Truth: While SR 2-3 does state that “the name of each individual that has provided significant real property assistance must be stated” in the certification, it is also noted as a reporting requirement under SR 2-2(a), (b) and (c)(vii) that a summary of the extent of that assistance be provided. While USPAP does not define “significant real property assistance,” there is guidance to assist appraisers in determining what constitutes assistance. The term “significant” means the contribution must be of substance: A person who collects or gives information but does not analyze does not provide significant appraisal assistance. Reference to “appraisal assistance” requires appraiser competency or a contribution related to the appraisal process.

Misconception Ten – What is credible for one use must be credible for another.

Truth: The key concept here: credible for the intended use. A different scope or use could result in a different solution (value) to the appraisal problem. As it relates to the Scope of Work Rule – “credible assignment results require support by relevant evidence and logic to the degree necessary for the intended use” – Black's Law Dictionary defines credible as “worthy of belief.” There is no “one size fits all” approach in solving appraisal problems. In other professions, there are different types of medical exams, accounting audits and legal briefs. Simply put: If one were to have a carpenter build a shelf, the scope of the design (strength, width, length) would be in accordance with the intended use of the shelf. Likewise, the user of an appraisal can be harmed if the use is not as intended based on the agreement at the time of the assignment.

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SD Real Estate Commission
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Pierre, SD 57501

4310 copies of this publication were printed by the South Dakota Real Estate Commission at a cost of .20 per copy.

2010 Fall Caravan Registration Form—Common Violations & Agency
One registration form per person!

Name _____ License Number and Type _____

(Mailing Address) (City) (State) (Zipcode) (Daytime Phone)

Email Address (reminder will be emailed a few days before class date): _____

Please check which session you would like to attend.

- | | | |
|--|--|--|
| <input type="checkbox"/> Deadwood – Wed., Sept. 29
Deadwood Lodge | <input type="checkbox"/> Rapid City – Thurs., Sept. 30
Ramkota | <input type="checkbox"/> Pierre – Fri., Oct. 1
Ramkota |
| <input type="checkbox"/> Sioux Falls – Mon., Oct. 4
Ramkota | <input type="checkbox"/> Sioux Falls – Tues., Oct. 5
Convention Center | <input type="checkbox"/> Aberdeen – Wed., Oct. 6
AmericInn |
| <input type="checkbox"/> Watertown – Thurs., Oct. 7
Ramkota/Event Center | | |

**NOTE NEW REGISTRATION FEES: Early Bird Registration Fee is \$60 (must be postmarked by Friday, Sept. 24)
After Sept. 24 & On-site Registration Fee is \$70**

Registrations should be mailed to SDREC, 221 W. Capitol Ave., Suite 101, Pierre, SD 57501.
Registrations received by phone or fax will NOT be accepted.